

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 411,1360, 1847, 1850,
1852 and 1854 of 1999

with

SPECIAL CIVIL APPLICATION No 10947 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL DARSHAN JAYANTIBHAI

Versus

TECHNICAL EDUCATION BOARD

Appearance:

Mr.A.J.Shastri, Mr.Unwala for Mr.P.K.Jani and
Mr.A.H.Desai for the petitioners.
Mr.P.B.Bhatt, learned A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 29/07/1999

COMMON ORAL JUDGEMENT

1. These seven Special Civil Applications are based on almost identical facts and involve common questions of law. I, therefore, propose to decide all these seven Special Civil Applications by this common judgment and order.

2. Petitioner in Special Civil Application No.411/99 appeared in the last Semester of the Civil Engineering Diploma Course held by the respondent - Board. His answers in Paper No.2 of Quantity Survey, in which he appeared on 9.10.98, was reported to tally with the answers of other examinee by the Examiner and on that basis he was found to have used unfair means and was punished by an order dt.15.12.98 with the cancellation of his examination of that Semester and was further debarred from another two examinations i.e. 2 Semesters thereafter. There is no dispute that one Semester is already over, but he still cannot appear in the ensuing Semester which is going to be held around November 1999.

3. Similar is the case with regard to the petitioner in Special Civil Application No.10947/98 for whom Mr.Unwala had appeared.

4. Petitioner in Special Civil Application No.1360/99 appeared in the last Semester Examination for the course of Diploma in Mechanical Engineering in the paper of Power Plant on 29.10.98. The answers given by the petitioner in the said papers of Power Plant were found to be tallying with the answers of some other examinee and, therefore, on the basis of the examiners report, he was found to have used unfair means and on that basis the entire examination of this Semester was cancelled and he was further debarred from 2 further Semesters by an order dated 15.12.98.

5. The petitioner in Special Civil Application No.1847/9 was appearing in the 2nd Semester of the First year of the Diploma in Electrical Engineering in the papers of Computer Application on 16.10.98. Her answers in the aforesaid papers were found to be tallying with the answers of some other examinee and on the basis of the examiner's report he has been found to have used unfair means. Accordingly she has been punished with the cancellation of her 2nd Semester examination in which she appeared in October 1998 and has been further debarred from appearing in 2 Semesters by an order passed on 16.12.98.

6. Similar is the case with regard to the petitioners in Special Civil Applications Nos.1850/99, 1852/99 and 1854/99.

7. The leaned counsel for the petitioners had challenged the aforesaid orders of punishment on the question of quantum of punishment and it was submitted

that the punishment, with which these petitioners have been visited, is drastic and disproportionate to the element of misconduct, which has been found against them. The learned A.G.P. has referred to the Code of Penalties and has pointed out that nature of the mal practice committed by these petitioners is covered by Item No.15, for which the penalty has been prescribed against it in the Code of Penalties, which is as under:-

"If the examination committee The results of the is satisfied from the report concerned examination of the examiner that the of the concerned candidates have copied from candidates to be one another or from any cancelled and the other source or they have concerned candidates to indulged in mass copying be debarred from during the examination. appearing in further examinations, which may be from TWO To FOUR examinations depending upon the nature of the case."

8. It has been submitted by Mr.P.B.Bhatt, learned A.G.P. that the Board of Technical Education has imposed the minimum punishment prescribed in cases of such mal practices and, therefore, there is no scope for further reduction of punishment even on the question of quantum of punishment and in the facts and circumstances of this case, it cannot be said that the punishment is either drastic or disproportionate.

9. Learned counsel for the petitioners had invited the attention of the Court to the punishment prescribed against Item No.5 of this Code of Penalties, which is reproduced as under:-

"If during the examination a His result of the Candidate is found in concerned examination possession of any un- session to be cancelled authorised book/notes/Guides/ and the candidate drawings/tracing/blue prints/ to be debarred from Chit/Graph or any other appearing in further written or drawn materials ONE examination." related to the subject of the examination.

10. It was submitted that nature of mal practice prescribed at Item No.5 is a mal practice of more serious

and grave nature inasmuch as there is a case in which the examinee is caught in the Examination hall itself for use of unfair means through unauthorised books or notes etc. and in such cases there is a direct material to show that they had used unfair means whereas in the case of the present petitioners, which is said to be covered by Item No.15, there is only an inference because the answers are tallying. Answers may tally not only on account of the copying but for other reasons also inasmuch the students may prepare from the same book, students may cram the answers and reproduce the same etc. and, therefore, in the case of mal practice in Item No.15, it can at the most be said to be a case of presumption and inference that the candidates may have copied if the answers are tallying. In this background, the minimum punishment in the case of mal practice under Item No.15 cannot be more than what has been prescribed against Item No.5. The petitioners have also produced a copy of the order dt.21/23-12-98, whereby the candidates, who were found to have used unfair means within the meaning of Item No.5, as aforesaid, and those who were caught using unfair means in the Examination hall itself, have been punished with the cancellation of the current examination and debarred from only one examination thereafter i.e. cases mentioned in Item Nos.1,2,3 and 4 respectively in the said order. I called upon the learned counsel to explain this anomaly but the only answer, which has been given, is that they have acted in accordance with the Code of Penalties and in such cases i.e. cases like that of the petitioners, the minimum punishment, which has been prescribed, has been imposed.

11. Having considered the arguments of both the sides, I find that this is an anomalous situation to impose lesser punishment on those, who are caught red handed in the Examination hall itself while they are actually using unfair means and to impose a more severe punishment in those cases where there is an inference or presumption that they may have used such unfair means because the answers are tallying. Answers in such cases may tally for more than one reason and, therefore, even the presumption, on the basis of which they are sought to be punished, is certainly rebuttable presumption and for the purpose of rebutting, all that a student can say is that he had not copied and if the answers are tallying, it is because of other reasons and may be it is a case of coincidence. In this background, I find that the punishment with which the petitioners have been visited in the instant cases is excessive and disproportionate and whereas the examination in which they were appearing in October 1998 has already been cancelled as a whole

(not in the concerned paper in which their answers were tallying but for all the subjects in which they appeared in that Semester) and by this time they have already lost one more Semester Examination, that should be treated to be sufficient punishment in the facts and circumstances of this case and that will also enure a punishment at par even with those cases in which the students are caught red handed while using such unfair means and, therefore, the punishment imposed upon each of the petitioners by the orders dated 15.12.98 and 16.12.98 shall stand reduced to the cancellation of the examination in which they appeared in October 1998 and they shall stand debarred from only one Semester Examination thereafter. With the result, that it will be open for them to appear in the ensuing Semester Examination to be held now in this year 1999 hereinafter. The impugned orders dated : 15.12.98 and 16.12.98 passed in the concerned Special Civil Applications with regard to the concerned petitioners in each of these matters are hereby partially quashed and set aside to the extent, as above.

12. It has been submitted on behalf of the petitioners that on account of the aforesaid impugned orders, the petitioners were not allowed to prosecute their studies in the subsequent Semester, which has already commenced and, therefore, the Board may be directed to take care that the petitioners are not subjected to any prejudice on account of the fact that they have not been able to prosecute their studies in the current Semester. It will be open for the students to make such a request before the Board and it is expected that the Board will take a decision on compassionate grounds, keeping in view the facts and circumstances in which the petitioners could not attend the course of the current Semester, that they are not made to suffer any prejudice on this count so as to ensure that they appear in the ensuing Semester Examination in case there is nothing otherwise against them herein-after. The petitioners shall submit such representation before the concerned authorities within a week's time from today.

13. These seven Special Civil Applications therefore partly succeed to the extent, as above, and the Rule is made absolute in the terms, as aforesaid, in all these cases. No order as to costs.